

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

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| WILLIAM MAGRUDER, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil No. 99-0077-B |
| |) | |
| ANTHONY SAWYER, |) | |
| |) | |
| Defendant |) | |

| | | |
|---------------------|---|---------------------|
| CHRISTINE ANDERSON, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil No. 99-0088-B |
| |) | |
| WILLIAM MAGRUDER, |) | |
| |) | |
| Defendant |) | |

RECOMMENDED DECISION

This action arose after Anthony Sawyer and his fiancée, Christine Anderson, paid to attend a party held on property owned by William Magruder. During the party, it is alleged that Anderson was physically assaulted by other party goers, and Magruder himself, and that Sawyer witnessed the assaults and ultimately intervened to prevent further injury to Anderson.

Defendant William Magruder moves to dismiss a portion of Plaintiff Christine Anderson's seven-count Complaint against him. Specifically, he seeks dismissal of

Counts II, VI, and VII. Count II of Anderson's Complaint sets forth a claim under the Maine Unfair Trade Practices Act ["UTPA"], 5 M.R.S.A. §§ 205A-214. Count VI states a claim under the federal Violence Against Women Act ["VAWA"], 42 U.S.C. § 13981. Count VII is a claim for violation of Plaintiff's civil rights in the provision of a public accommodation, brought under 42 U.S.C. §§ 1981, 2000a.

Count II – Breach of Contract and Violation of the Maine Unfair Trade Practices Act.

Magruder moves to dismiss so much of Count II as purports to state a violation of the UTPA. The grounds for the Motion are that Anderson has not sought restitutionary relief, in Magruder's view, the only measure of relief available under the UTPA. Magruder ignores, however, a 1991 amendment to the UTPA providing for "actual damages" in addition to "restitution and . . . such other equitable relief." 5 M.R.S.A. § 213(1). Anderson's allegation in Count II of the Complaint is that Sawyer and Anderson paid to attend the party, and that Magruder misrepresented that the property was reasonably safe and that the party would be operated in a reasonable and appropriate manner.¹ Anderson has therefore satisfied the requirement that she show a loss, in this case the entrance fee, resulting from the misrepresentation. *See,*

¹ Magruder suggests in his memorandum that "[t]here are no cases supporting Defendant's use of the UTPA" to redress "individual private tortious conduct." This argument is not developed, however. Magruder has focused his attack on the lack of an available remedy other than restitution, and the Court will similarly focus its analysis on that argument.

Mariello v. Giguere, 667 A.2d 588, 590 (Me. 1995) (addressing the pre-amendment version of section 213, but noting that the new version would require only an allegation of loss to the victim). In light of the fact that actual damages are available under the UTPA, it is not necessary that a plaintiff actually seek restitution in his or her claim under the Act. Anderson's claim under the UTPA in Count II of the Complaint should not be dismissed.

Count VI – Violation of the Violence Against Women Act.

The United States Supreme Court has granted a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit in the matter of *Brzonkala v. Morrison*, 169 F.3d 820 (4th Cir. 1999). *United States v. Morrison*, 120 S. Ct. 11 (1999). The parties agree that the resolution of this case by the United States Supreme Court will also resolve the issues raised by Defendant Magruder's Motion to Dismiss Count VI of Anderson's Complaint. Accordingly, I recommend the Motion to Dismiss Count VI of the Complaint be denied without prejudice to Magruder's right to raise the issue at a later time. The matter should proceed as usual, including through jury trial if necessary.² Should Anderson prevail on her claim in Count VI, however, no final judgment should enter in this matter until the

² Nothing in this recommendation should be construed to prevent Defendant from seeking judgment as a matter of law on this claim pursuant to Federal Rule of Civil Procedure 56.

Supreme Court has issued a decision in *Brzonkala*. Under those circumstances I recommend the Court grant Magruder until 10 days following the decision in *Brzonkala* to refile the Motion to Dismiss, failing which judgment should then enter on the verdict.

Count VII – Violation of the Civil Rights Act.

Magruder first argues that Anderson has failed to state a claim under 42 U.S.C. § 1981. “Section 1981 basically prohibits racial discrimination in the making and enforcement of private contracts.” *Huggar v. Northwest Airlines*, 1999 WL 59841 (N.D. Ill. 1999). Magruder does not assert that Anderson’s Complaint fails to allege the existence of a contract, but argues that “[i]f the Court were to find that the parties had entered into a contract and that that contract was breached due to racial animus, Count VII would still fall short of § 1981.” Def. Mem. (not paginated). Magruder then refers the Court to a United States Supreme Court decision holding that section 1981 was to be strictly applied only to the formation and enforcement of contracts. *Patterson v. McLean Credit Union*, 491 U.S. 164, 170 (1989).

Because Anderson did not allege her right to enter into a contractual relation with Magruder, or her ability to enforce any such contract, was abridged, Magruder asserts she has failed to state a claim under section 1981. As several courts have now acknowledged, however, *Patterson* was overruled by the Civil Rights Act of 1991,

which amended the term “make and enforce contracts” to include “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.” 42 U.S.C. § 1981(b). *Eg., Charity v. Denny’s Inc.*, 1999 WL 544687 *2 (E.D. La. July 26, 1999); *Jones v. Montgomery Hosp.*, 1993 WL 12836 *3 (E.D. Pa. Jan. 15, 1993). The Court concludes that Anderson’s claim of discrimination under section 1981 should not be dismissed in light of this definition.

Magruder next argues that Anderson has failed to state a claim for racial discrimination in public accommodations under 42 U.S.C. section 2000a.³ The essence of Magruder’s argument on this claim is that Anderson has not alleged she was denied entry to the entertainment event, but rather that she was poorly treated once inside. In Magruder’s view, the statute protects only an individual’s right of access to public accommodations. The Court disagrees. The statute itself provides that “equal access” includes the “full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.” 42 U.S.C. § 2000a(a). This section has been held to support a claim for discriminatory treatment in a restaurant, even absent a refusal of service or

³ Magruder also notes that section 2000a does not cover gender discrimination. Anderson concedes as much and indicates that her claim under section 2000a was intended only to address alleged racial discrimination.

request to leave, and this Court believes it supports Anderson's claim here. *Charity*, 1999 WL 544687 at *5.

Conclusion

For the foregoing reasons, I hereby recommend Defendant Magruder's Motion to Dismiss Plaintiff Anderson's claims in Counts II, VI, and VII of her Complaint be DENIED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: December 13, 1999